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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,224	01/26/2004	Byoung-Woo Cho	1781.1001	6552
21171	7590	08/22/2005	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			HANEY, RICHALE LEE	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,224

Applicant(s)

CHO, BYOUNG-WOO

Examiner

Richale L. Haney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: signs 200, 210, 220, and 230 were omitted. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested: Free-size Headwear.

2. The disclosure is objected to because of the following informalities: subject headings are improperly underlined and should appear in all caps.

Appropriate correction is required.

3. Claim 4 is objected to because of the following informalities: "the first stretchable fabric includes high twist yarn" is redundant and fails to further limit the parent claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant discloses a stretchable yarn constructed from non-stretch fibers twisted over 800 times per meter, claiming that the structure will allow the yarn to be elastic. It is inherent that when twist increases in a yarn, the twist angle will also increase creating a higher fiber friction. The yarn will become more compact and there will be less space between the fibers to expand. Applicant provides no specific data supporting the claimed stretch of the yarns and therefore the claims are rejected.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "high" in claims 1, 4, 5, and 7 is a relative term which renders the claim indefinite. The term "high" is not defined by the claim, the

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specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 – 5, 11 and 12 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Whang (6,199,213). Whang discloses a hat comprised of bias cut woven panels made from non-stretchable fibers, (Column 3, lines 5-12) which have the ability to stretch. A sweatband is attached by flexible stitch (Column 4, line 44) to the lower peripheral edge (Figure 3, 29, 26, 23) and acts as the head-receiving portion (Figure 3). It is noted that all yarns made from natural fibers, such as cotton (Column 3, line 32) are creating by spinning and therefore the weft yarns are formed from high twist yarn. In regard to fabric and the ability to stretch, stated in Steven Warner's text "Fiber Science" is Hooke's Law, which teaches that all materials have the ability to stretch and recover (page 136-138).

9. Claims 1, 6 – 9 and 13 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Higgs (WO 01/05259). Higgs discloses a cap made from stretchable fabric with high twist yarn and a knit sweatband partially covering the foam core attached to the lower peripheral edge (Figure 4, 22 and Figure 3, 12). The

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sweatband is comprised of a second stretch fabric including elastic (Page 1, line 28).

The body of the crown includes shape tape (Figure 1, 9) attached along the lower peripheral edge of the cap.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of Nebeker (5,566,395). Higgs discloses all of the claimed invention except for the particular type of foam core found in the band of the invention. Nebeker teaches a urethane foam used as the core for a sweatband (Column 1, lines 54-56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Higgs by using a polyurethane (a type of urethane) foam as taught by Nebeker in order to draw moisture away from the hat (Column 2, lines 23-24).

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of Whang. Higgs discloses all of the claimed invention except for the band core and the second stretchable fabric being joined by elastic yarn. Whang teaches the fabric and the band core being joined by elastic thread (Column 4, line 44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Higgs by attaching the band core and the fabric by means of elastic thread as taught by

Whang in order to provide a flexibility that is capable of fitting various head sizes
(Column 4, lines 28-31).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney
Patent Examiner
Art Unit 3765
July 14, 2005

RLH


JOHN J. CALVERT
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